

October 2, 2013

William Z. Derosia, Jr.  
D/b/a Great Brook Lumber Company  
20 Industrial Road  
Southwick, MA 01077

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

RE: Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation (“CLF”)<sup>1</sup> hereby gives notice to the addressed persons of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act (hereinafter “Clean Water Act,” “CWA,” or “Act”), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R., part 135 (the “Notice”) to the addressed persons of CLF’s intention to file suit in United States District Court of the District of Massachusetts seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter.

The subject of this action is two-fold. First, William Z. Derosia, Jr. d/b/a Great Brook Lumber Company, (hereinafter referred to as “Great Brook Lumber”) is discharging stormwater directly associated with the timber products facility at 20 Industrial Road, Southwick MA 01077 (the “Facility”), to the waters of the United States without a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Second, Great Brook Lumber has failed to obtain coverage under any Clean Water Act permit including the Multi-Sector General Permit<sup>2</sup> (“MSGP”) adopted by EPA for industrial sources of polluted stormwater runoff, and failed to comply with the specific requirements of any such permit, in violation of 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

**BACKGROUND**

The Facility is located along the bank of Great Brook (Waterbody ID MA32-25). Great Brook is categorized as a Category 2 Waterbody, indicating that it is in attainment for some uses and has not been assessed for other uses.<sup>3</sup> Great Brook confluent with the Westfield River downstream of the Facility.

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<sup>1</sup> CLF is a not-for-profit 501(c)(3) organization dedicated to the conservation and protection of New England’s environment.

<sup>2</sup> ENVIRONMENTAL PROTECTION AGENCY, MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP) [hereinafter MSGP or “permit”], *available at* [http://www.epa.gov/npdes/pubs/msgp2008\\_finalpermit.pdf](http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf) (last visited February 13, 2012).

<sup>3</sup> Massachusetts Year 2012 Integrated List of Waters, *available at* <http://www.mass.gov/eea/docs/dep/water/resources/07v5/12list2.pdf> (last visited September 25, 2013).

The Westfield River (Waterbody Segment MA32-06) is categorized as a Category 3 Waterbody, indicating that it has not been assessed.<sup>4</sup>

Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt.<sup>5</sup> Industrial activities, such as material handling and storage, processing, reclaiming, and wholesale distribution of timber product materials or other operations that occur at industrial facilities, may be exposed to stormwater.<sup>6</sup> Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.<sup>7</sup>

Great Brook Lumber is required to apply for coverage under a Clean Water Act discharge permit such as the MSGP in order to discharge lawfully. Since at least 2007, Great Brook Lumber has been specifically required to apply for coverage under the MSGP by filing a Notice of Intent ("NOI") within ninety days after the initial issuance of the MSGP.<sup>8</sup> On September 29, 2008, after expiration of the prior permit, the EPA issued a new MSGP requiring all covered facilities to file an NOI for coverage under the 2008 permit by January 5, 2009.<sup>9</sup>

Great Brook Lumber has failed to obtain coverage under the MSGP or any other valid authorization, at any time. Therefore, Great Brook Lumber is operating in violation of the Clean Water Act.

### **PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS**

William Z. Derosia, Jr., d/b/a Great Brook Lumber Company, is the person, as defined by 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. Great Brook Lumber has operated the Facility since at least 2007, and currently advertises as the operator of the Facility. Great Brook Lumber and its agents and directors, including but not limited to William Z. Derosia, Jr., have operational control over the day-to-day industrial activities at this Facility. Therefore, they are responsible for managing stormwater at the Facility in compliance with the Clean Water Act.

### **LOCATION OF THE ALLEGED VIOLATION**

The violations alleged in this Notice have occurred and continue to occur at the Facility located at 20 Industrial Road, Southwick MA 01077.

### **ACTIVITIES ALLEGED TO BE VIOLATIONS**

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<sup>4</sup> Massachusetts Year 2012 Integrated List of Waters, *available at* <http://www.mass.gov/eea/docs/dep/water/resources/07v5/12list2.pdf> (last visited September 25, 2013).

<sup>5</sup> See 40 C.F.R. § 122.26(b)(13).

<sup>6</sup> See 40 C.F.R. § 122.26(b)(14).

<sup>7</sup> See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

<sup>8</sup> EPA's Final National Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) was first issued in 1995, reissued in 2000, and again in 2008. See 60 Fed. Reg. 50,804 (Sept. 29, 1995); 65 Fed. Reg. 64,746 (Oct. 30, 2000); and 73 Fed. Reg. 56,572 (Sept. 29, 2008). See MSGP part 1.1 and 1.3.1.

<sup>9</sup> See MSGP Table 1-2.

Great Brook Lumber has, and continues to, engage in “industrial activities,” and its operations fall under SIC Code prefix 24, within the meaning of 40 C.F.R. § 122.26(b)(14)(ii).<sup>10</sup> Because the Facility engages in industrial activity identified by the SIC Code prefix 24 (including but not limited to 2499-13: wood, mulch and sawdust; 2421: general sawmills and planing mills; 2426: hardwood dimension and flooring mills; 2429: special product sawmills; and 2411: log storage and handling) and discharges stormwater associated with industrial activity, Great Brook Lumber is required to apply for, obtain coverage, and comply with the requirements of a National Pollutant Discharge Elimination System (“NPDES”) permit such as the MSGP. Great Brook Lumber has failed to take any of these required steps.

Great Brook Lumber’s activities at the Facility include, but are not limited to: buying, producing, processing, storing and selling logs, mulch, bark, firewood, flooring, furniture grade hardwood, wood chips, clean mill chips; the purchase, collection, processing and storage of bark, wood chips and mulch outdoors and the operation and storage of industrial equipment. The Facility’s piles contain, but are not limited to: large amounts of logs, wood, mulch, sawdust and earth products.

Piles of logs, wood, mulch, sawdust, sawmill products, waste, interior access roads, vehicles and heavy equipment, and material processing and handling areas at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over the industrial materials and areas, picking up bark and wood debris, total suspended solids (TSS), leachates (which can contain high levels of TSS and biochemical oxygen demand (BOD)), oil, grease, metals, solvents, acids, nutrients, pathogens, dissolved solids, trash, fuel and other pollutants associated with the Facility’s operations. The polluted runoff is then conveyed by the operation of gravity via sloped surfaces, site grading, surface water channels, and subsurface hydrological connections into waters of the United States.<sup>11</sup>

### **STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED**

The Clean Water Act prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.<sup>12</sup> Great Brook Lumber discharges stormwater associated with its industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), from its Facility by the operation of gravity via sloped surfaces, site grading, surface water channels, and subsurface hydrological connections into waters of the United States. Because Great Brook Lumber has not obtained coverage for these stormwater discharges under the MSGP or an individual NPDES permit, it is illegally discharging stormwater without

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<sup>10</sup> See MSGP, Appendix D: Activities Covered, at D-2. Timber products facilities identified by the SIC Code prefix 24 (including but not limited to 2499-13: wood, mulch and sawdust; 2421: general sawmills and planing mills; 2426: hardwood dimension and flooring mills; 2429: special product sawmills; and 2411: log storage and handling) are subject to the requirements of the MSGP for stormwater discharges.

<sup>11</sup> See 40 C.F.R. § 122.26(c)(i)(E)(6). EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity.

<sup>12</sup> 33 U.S.C. § 1311(a).

a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).<sup>13</sup> By failing to apply for and comply with the specific requirements of the MSGP, Great Brook, is in violation of 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

**a. Great Brook Lumber is discharging stormwater to waters of the United States without a permit.**

Great Brook Lumber is an industrial discharger and its operations fall under SIC Code prefix 24, within the meaning of 40 C.F.R. § 122.26(b)(14)(ii), which means that pursuant to Section 402(p) of the Act, Great Brook Lumber is obligated to apply for coverage under the MSGP or obtain other legal authorization. Because Great Brook Lumber has operated and continues to operate without a permit under Section 402(b), Great Brook Lumber is in violation of Section 301(a) of the Act.

In addition, during storm events, Great Brook Lumber's, "industrial activities" at its Facility have resulted in a "discharge of pollutants" within the meaning of 33 U.S.C. § 1362(12) and "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14), from its Facility on each and every day that there has been a measurable precipitation event of above 0.1 inches. There have been many such storm events since 2007. The Facility is generating and conveying pollutants from at least the following point sources: piles of logs, wood, mulch, sawdust and earth products, interior access roads, collected runoff from material processing and handling areas, channelized flow of runoff, the equipment left outdoors, the vehicles driving on and off the Facility, and other collections and conveyances of stormwater associated with industrial activity.<sup>14</sup> Great Brook flows into the Westfield River, both of which are "waters of the United States," as defined in 40 C.F.R. § 122.2, and therefore, "navigable waters," as defined in 33 U.S.C. § 1362(7). The Facility is discharging this industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

**b. Great Brook Lumber is violating the Clean Water Act by failing to obtain coverage and failing to comply with the requirements of the MSGP.**

Great Brook Lumber is violating 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1), by failing to apply for, obtain coverage, and comply with the requirements of the MSGP.<sup>15</sup> The Facility is an industrial discharger and its operations fall under SIC Code prefix 24, within the meaning of 40 C.F.R. § 122.26(b)(14)(ii), and must obtain coverage under the MSGP for its stormwater discharges and for stormwater discharges from any co-located industrial activities.<sup>16</sup> Great

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<sup>13</sup> See 33 U.S.C. § 1362(12); 40 C.F.R. § 122.2; MSGP, Appendix A: Definitions, Abbreviations, and Acronyms (defining the term "discharge of a pollutant" as "any addition of any pollutant to navigable waters from any point source").

<sup>14</sup> These discharges constitute "point sources" as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2.

<sup>15</sup> MSGP part 1.1 and 1.2.

<sup>16</sup> See MSGP part 1.1; MSGP part 8.A.

Brook Lumber's failure to obtain coverage and comply with the permit is in violation of the MSGP and 33 U.S.C. § 1342(p) of the Clean Water Act.<sup>17</sup>

**1) Great Brook Lumber Must Develop and Implement a Stormwater Pollution Prevention Plan (SWPPP).**

As a prerequisite to obtaining coverage under the MSGP, Great Brook Lumber must prepare a Stormwater Pollution Prevention Plan ("SWPPP").<sup>18</sup> The SWPPP must include, but is not limited to, the following: information related to a company stormwater pollution prevention team, a site description, a summary of pollutant sources, a description of control measures, and schedules and procedures pertaining to control measures and monitoring.<sup>19</sup> Great Brook Lumber has failed to develop a SWPPP in accordance with the MSGP requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

**2) Great Brook Lumber Must Submit to EPA a Complete Notice of Intent to be Covered under the MSGP.**

To be eligible to discharge under the MSGP, Great Brook Lumber must submit a complete Notice of Intent ("NOI") to the EPA.<sup>20</sup> To complete the NOI, the covered Facility must make certain verifications such as verifying that no harm is done to a species in violation of the Endangered Species Act.<sup>21</sup> Great Brook Lumber has failed to prepare and file an NOI meeting all applicable requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

**3) Great Brook Lumber Must Implement Control Measures and Meet Water-Quality Effluent Limitations.**

To be eligible to discharge under the MSGP, Great Brook Lumber must select, design, install, and implement control measures (including best management practices) to prevent polluted stormwater discharges from reaching nearby waterbodies. Great Brook Lumber must address the selection and design considerations in the permit, meet the non-numeric effluent limitations in the permit, and meet limits contained in applicable permit effluent limitations guidelines.<sup>22</sup> These control practices must be in accordance with good engineering practices and manufacturer's specifications.<sup>23</sup> If the control measures are not achieving their intended effect of minimizing pollutant discharges, the permittee must modify these control measures as expeditiously as practicable.<sup>24</sup> Great Brook Lumber has failed to cover the materials and operations that may result in polluted stormwater runoff. Great Brook Lumber has not

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<sup>17</sup> A thorough search of EPA's Electronic Stormwater Notice of Intent database reveals that Great Brook has not filed an NOI for the Facility. EPA's Electronic Stormwater Notice of Intent database, <http://cfpub.epa.gov/npdes/stormwater/noi/noisearch.cfm> (last visited September 26, 2013).

<sup>18</sup> See MSGP part 5.

<sup>19</sup> See MSGP part 5.1.

<sup>20</sup> See MSGP part 1.3.1.

<sup>21</sup> See MSGP part 1.1.4.5 and 2.3.

<sup>22</sup> See MSGP part 2.1.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

implemented the required control measures in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

#### **4) Great Brook Lumber Must Conduct Routine Facility Inspections.**

To be eligible to discharge under the MSGP, Great Brook Lumber must conduct routine inspections of all areas of the Facility where industrial materials or activities are exposed to precipitation, and must ensure that all stormwater control measures comply with the effluent limits contained in the MSGP.<sup>25</sup> Routine inspections must be conducted at least quarterly but in many instances monthly inspections are most appropriate.<sup>26</sup> These inspections must occur when the Facility is in operation.<sup>27</sup> The schedule of these inspections must be included in the Facility's SWPPP and be performed by qualified personnel.<sup>28</sup> Great Brook Lumber has failed to conduct the required routine inspections in accordance with the MSGP requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

#### **5) Great Brook Lumber Must Comply with the Required Monitoring and Sampling Procedures.**

To be eligible to discharge under the MSGP, Great Brook Lumber must collect and analyze stormwater samples and document monitoring activities consistent with the procedures in the MSGP.<sup>29</sup> The MSGP requires five types of analytical monitoring (one or more of which may apply) including quarterly benchmark monitoring, annual effluent limitations guidelines monitoring, State or Tribal-specific monitoring, impaired waters monitoring, and other monitoring as required by the EPA.<sup>30</sup> An operator must monitor each outfall identified in the SWPPP covered by a numeric effluent limit.<sup>31</sup> Required monitoring must be performed after stormwater events that result in an actual discharge on a required schedule.<sup>32</sup> All monitoring data collected under the MSGP must be reported to EPA. Great Brook has failed to conduct the required monitoring under the MSGP and has failed to submit the required monitoring reports to EPA in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

#### **6) Great Brook Lumber Must Carry out the Required Reporting and Recordkeeping.**

Great Brook Lumber must maintain and submit any and all required monitoring data.<sup>33</sup> Such monitoring data includes the following: an annual report to EPA which includes the Facility's findings from the annual comprehensive site inspection and any documentation of correction actions;<sup>34</sup> an Exceedance Report to the EPA if any of the follow-up monitoring shows any exceedances of a numeric effluent

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<sup>25</sup> See MSGP part 4.1.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> See MSGP part 6.

<sup>30</sup> See MSGP part 6.2.

<sup>31</sup> See MSGP part 6.1.1.

<sup>32</sup> See MSGP part 6.1.3.

<sup>33</sup> See MSGP part 7.1

<sup>34</sup> See MSGP part 7.2.



limit;<sup>35</sup> and any other required reports under the MSGP.<sup>36</sup> Great Brook Lumber has failed to maintain the required records and failed to submit all required monitoring data under the MSGP in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

### **7) Great Brook Lumber Must Comply with the Requirement of MSGP Subpart A.**

Great Brook Lumber must also comply with the sector-specific requirements contained in Subpart A of the MSGP.<sup>37</sup> Subpart A requires timber products facilities to implement additional technology-based effluent limits,<sup>38</sup> meet additional SWPPP and inspection requirements,<sup>39</sup> and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to timber products facilities.<sup>40</sup> Great Brook Lumber must also prevent any discharge of any chemical formulations or chemical additives sprayed on or applied to wood products<sup>41</sup> and abide by the effluent limitations for spray down/ intentional wetting of logs, if any.<sup>42</sup> Great Brook Lumber has failed to comply with the requirements of Subpart A of the MSGP in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

### **DATES OF VIOLATION**

Each day on which Great Brook Lumber operates its Facility without permit coverage or discharges stormwater without a permit from the Facility is a separate and distinct violation of Section 301(a) and 402(p)(2)(B) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

Great Brook Lumber has discharged stormwater without a permit in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), on every day since at least 2007 on which there has been a measurable precipitation event.

Every day, since at least 2007, on which Great Brook Lumber has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of the MSGP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the Clean Water Act, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A).

These violations are ongoing and continuous, and barring a change in the stormwater management controls at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

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<sup>35</sup> See MSGP part 7.3.

<sup>36</sup> See MSGP part 7.4.

<sup>37</sup> See MSGP, Appendix D, Table D-1, Sector A.

<sup>38</sup> See MSGP part 8.A.3.

<sup>39</sup> See MSGP part 8.A.4 and 8.A.5.

<sup>40</sup> See MSGP part 8.A.6.

<sup>41</sup> See MSGP part 8.A.2.

<sup>42</sup> See MSGP part 8.A.7.

### **RELIEF REQUESTED**

Great Brook Lumber is liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects Great Brook Lumber to a penalty up to \$32,500 per day for each violation which occurred between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for each violation that occurred after January 12, 2009.<sup>43</sup> CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring Great Brook Lumber to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with matter.

### **CONCLUSION**

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Zachary Griefen within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

Sincerely,



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<sup>43</sup> 40 C.F.R. § 19.2





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